

Exhibit 1 - Nicholas Gicinto Deposition Excerpts



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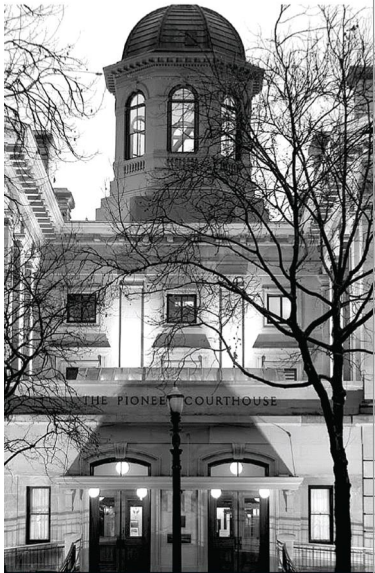
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**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

TESLA, INC.,

Plaintiff,

vs.

No. 3:18-CV-00296-LRH-CBC

MARTIN TRIPP,

Defendant.

CONFIDENTIAL

DEPOSITION OF

NICHOLAS RYAN GICINTO

**TAKEN ON
TUESDAY, AUGUST 27, 2019
9:58 A.M.**

**HOME2SUITES CONFERENCE CENTER
2001 MAIN STREET
KANSAS CITY, MISSOURI 64108**

1 Q. Kind of like being falsely accused of
2 being a mass shooter?

3 MR. UMHOFFER: Objection, calls for
4 speculation.

5 A. I didn't accuse anybody of being a mass
6 shooter.

7 BY MR. FISCHBACH:

8 Q. When did you first become involved in the
9 investigation of Mr. Tripp?

10 A. Sometime I would say around June of 2018.

11 Q. Well, do you have a specific date?

12 A. No.

13 Q. Are there --

14 A. Early -- early June.

15 Q. -- any records or documents you could
16 point me to that would tell me precisely when you
17 became first involved?

18 A. I don't. I didn't bring anything we me.
19 I'm not an employee of Tesla. I don't have access
20 to any records or documents.

21 Q. How did you first get involved in the
22 investigation of Mr. Tripp? And by that, I mean, I
23 am assuming somebody reached out to you, somebody
24 probably in Tesla management, and advised you of a
25 situation and wanted you to do something about it,

1 **so I'm trying to get a grasp of how that came to be.**

2 A. So as I recall Linette Lopez reached out
3 to the communications team at Tesla stating that she
4 was about to print an article and was looking for
5 comments. That generated some sort of an email
6 thread I would imagine because that's typically how
7 it works, and because it was my job to investigate
8 theft of intellectual property and confidential
9 information, that that made its way over to me, I
10 was included in some email at some point in time
11 bringing that to my attention to investigate the
12 source of that leak.

13 **Q. And how did you go about investigating the**
14 **source of that leak?**

15 A. Well, as I recall initially when it was
16 only one outreach from Ms. Lopez at that time and I
17 was the only member of the team because Tesla had
18 frozen hiring on my fourth day so I didn't have
19 anybody to help me do this at that point. I think I
20 was a little backed up and I think I kind of put it
21 on the pile of things to do. But it was shortly
22 thereafter, I don't know the exact date, I'm sorry,
23 a second re-inquiry came from Ms. Lopez about
24 another article and that bumped it up on my priority
25 list because that indicated that there was an

1 individual or individuals with ongoing access
2 providing a flow of information. So I looked closer
3 into those threads and started to make some phone
4 calls into the individuals who would have knowledge
5 of the subject matter that was being discussed in
6 her articles, because I'm not an expert in whatever
7 those issues were, right? Whenever there is a leak
8 of information in a company it can come from
9 anywhere, and as a security investigator I have to
10 go to the people who know about that particular
11 issue that's being discussed in that article and get
12 up to speed from them to understand more about, is
13 this significant, why is this important, who had
14 access to the information, talk to me about what do
15 you think is this a big deal, so I took those
16 initial investigative steps.

17 **Q. How did you determine that Mr. Tripp was**
18 **the individual that provided information to Linette**
19 **Lopez at Business Insider?**

20 A. It was a fairly intent investigative
21 process over several days, but it involved taking
22 the articles that she had published, looking
23 specifically at each article, at what information
24 was confidential in those articles, listing those
25 out so we could see independently what those -- what

1 that information was. And then what you -- what you
2 do is you go about determining who had access to
3 every single bit of that information, to each
4 component of the information. And as that was
5 listed up on the board and we were able to
6 continuously attribute the information to Mr. Tripp,
7 as well as rule out others who wouldn't have access
8 to that information, eventually we got to the
9 smoking gun, which was, there was a Tableau chart
10 which was on one of our systems that tied -- tied to
11 data from the manufacturing operating system. And
12 that Tableau chart essentially populated in real-
13 time, it was always updating based on the data in
14 the MOS. And there was an article -- in one of the
15 articles from Ms. Lopez it specifically stated some
16 numbers, very specific down to the decimal point,
17 and I forget what it was tied to. I don't want to
18 inaccurately say, right, this was a year ago, I
19 haven't reviewed anything, so -- but it was tied to,
20 I want to say some -- some amount of scrap or
21 something to that effect. And we found a Tableau
22 chart that populated the details for that data, we
23 went into the audit logs for that Tableau chart, we
24 looked to see who had accessed that chart, the exact
25 time and date when the figure on that chart equaled

1 the figure on -- within Ms. Lopez's article, and the
2 only individual who accessed the chart at that time
3 was Martin Tripp. It's so precise in that chart that
4 if you deviated even 30 seconds either way, you
5 would get a different figure, so it was -- it was
6 very clear and no one had accessed it, I believe,
7 within ten minutes of Mr. Tripp. So it was very
8 clear to us that he was the only one who had access
9 to that information.

10 **Q. Kind of like DNA evidence almost, the odds**
11 **are one in a trillion it could be somebody else?**

12 A. Digital DNA is a good way to put it and --
13 but that wasn't the only factor. We are able to
14 attribute a number of other pieces of data that were
15 in the -- that was in the articles to him and his
16 ability to access that based on emails he had
17 received, so we could tie each -- each data point to
18 him in some form or fashion.

19 **Q. When did you -- when was this smoking gun**
20 **identified, the digital DNA?**

21 A. The night of the day -- the night prior to
22 when we interviewed him for the first time.

23 **Q. I will represent to you at least based on**
24 **the discovery here that the interview occurred on**
25 **both the 14th and 15th of June. Do those dates jibe**

1 with your recollection?

2 A. Yes.

3 Q. So it sounds to me like you discovered the
4 smoking gun, the digital DNA, the evening of June
5 13th, 2018?

6 A. That makes sense as I recall. We were
7 very low on sleep, we were doing a lot of work
8 working long, long days, so I'll do my best to be
9 accurate here.

10 Q. I appreciate that.

11 A. Sure.

12 Q. Well, you certainly identified the smoking
13 gun digital DNA before you interviewed Martin Tripp
14 on June 14th, correct?

15 A. Correct.

16 Q. You, like a good investigator, showed up
17 to the interview armed with the knowledge that Mr.
18 Tripp had done this, correct?

19 A. Yes.

20 Q. At this time were you in communicate --
21 and again, I don't -- your attorney's attorney-
22 client objection is well stated, so I'm not asking
23 what was said, but at this time were you
24 communicating with Tesla's attorneys?

25 A. Yes.

1 Q. The court reporter has handed you what's
2 been marked as Deposition Exhibit 5. I will
3 represent to you these are reflect two emails that
4 Elon Musk sent to, quote, everybody, which I presume
5 is all Tesla employees, first on June 17th and then
6 again on June 18th of last year. I want to focus on
7 the June 17th email. I was dismayed -- and this is
8 Elon Musk speaking. I was dismayed to learn this
9 weekend about a Tesla employee who conducted quite
10 extensive and damaging sabotage to our operations.
11 This included making direct code changes to the
12 Tesla manufacturing operating system under false
13 user names and exporting large amounts of highly
14 sensitive Tesla data to unknown third parties.

15 Did your investigation uncover any
16 damaging sabotage conducted by Mr. Tripp?

17 A. I think it's fair to say that the
18 information he provided, particularly the extent and
19 the false nature of some of the information provided
20 Ms. Lopez, specifically around the timing of that
21 information being provided just prior to an earnings
22 call had the potential to be quite damaging to the
23 company.

24 Q. Did he damage any equipment?

25 A. Not that I know of.

1 Q. Did he damage any machines at the
2 Gigafactory?

3 A. Not that I know of. You're focused on
4 physical sabotage, but that's not the only form of
5 sabotage.

6 Q. Well, I'm focusing on the phrase damaging
7 sabotage, so I'm trying to figure out what things he
8 might have damaged.

9 A. Reputation, stock value, earning potential
10 for the company from a -- strictly from the market
11 standpoint. I mean, prior to an earnings call
12 that's certainly interesting timing.

13 Q. To your knowledge did Mr. Tripp cause any
14 long-term damage to Tesla's stock price?

15 A. I haven't conducted such research to be
16 able to speculate on such question.

17 Q. But your investigation uncovered, though,
18 physical damage at the Gigafactory, correct?

19 A. Correct.

20 Q. And again I'm trying to understand what
21 the -- other than what you've told me so far,
22 reputation, stock price, did your investigation
23 uncover any other -- any, quote, damaging sabotage
24 to Tesla's operations?

25 A. I think you also evaluate the extent to

1 which a number of other teams had to stop what they
2 were doing to try to identify him and his activities
3 which was certainly damaging to their productivity,
4 to things they were also working on. It's not great
5 for morale when you have to think about from a
6 company perspective and a culture perspective having
7 to, you know, hunt -- hunt, so to speak, for someone
8 who is conducting these types of activities and the
9 number of teams that have to be involved to support
10 a technical investigation, particularly on a network
11 where you're looking for something where data
12 exfiltration is involved. It takes a lot of time
13 and resources. So I suppose it's also damaging from
14 a productivity perspective to a lot of teams.

15 **Q. Did your investigation uncover any loss of**
16 **productivity as a result of Mr. Tripp?**

17 A. I certainly had a lot of other things I
18 could have been doing so it impacted my productivity
19 on a number of other investigations and things I was
20 working on, but -- and it absolutely factored into
21 what other teams were doing as part of their normal
22 activities to have to stop and look for things that
23 he possibly had been responsible for making changes
24 or what he could have put on the system based on the
25 information we were seeing at the time steered them

1 away from their normal business.

2 **Q. Did the Gigafactory produce less**
3 **components than it normally would have because of**
4 **Mr. Tripp?**

5 A. I have no knowledge of what the production
6 numbers were, but again, you're focusing strictly on
7 productivity, of one aspect of what Tesla does.
8 There are a number of things from looking at what
9 Tesla does in how to measure productivity.

10 **Q. Actually I'm focusing on the words of Elon**
11 **Musk that "Mr. Tripp conducted quite extensive and**
12 **damaging sabotage to our operation."**

13 A. There's a lot of operations at Tesla, not
14 just producing widgets for cars.

15 **Q. What are those other operations?**

16 A. Well, there's operations for, you know,
17 within HR, within security to help keep people safe
18 and protect people.

19 **Q. How did Mr. Tripp damage those operations?**

20 A. Well, there is a lot of work that we would
21 be -- that we were working on moving forward towards
22 building a security program, which I had to stop
23 because I was focused on this investigation. You
24 know, I couldn't focus on other things that I would
25 have been otherwise doing because I was having to

1 A. So the Tesla investigative team at the
2 time was me, I've never followed Mr. Tripp, so
3 you're going to have to --

4 Q. Did Tesla ever hire anybody to follow Mr.
5 Tripp?

6 A. Tesla contracted private investigators to
7 determine Mr. Tripp's whereabouts, yes.

8 Q. When did that occur?

9 A. Shortly after an email exchange between
10 Elon Musk and Mr. Tripp just -- just after I believe
11 when Mr. Tripp made some type of a statement which
12 was interpreted as a veiled threat saying something
13 to the effect of you're going to get what's coming
14 to you. But I'm not positive. I don't have the
15 email in front of me and I don't know that I saw it
16 or that I maybe only heard about it. But there was
17 some type of an email where Tripp made a statement
18 that was interpreted as a possible threat and not
19 knowing necessarily what the implication was or what
20 Mr. Tripp meant and in the interest of safety of the
21 employees at Gigafactory, it was requested that
22 Tesla's security team determine with Mr. Tripp was
23 located so we had an early warning if he were to
24 approach the Gigafactory. We also knew from our
25 investigation that he had attempted to sell a

1 firearm to another employee at the Gigafactory. We
2 had also seen he had attempted online to sell
3 firearms-related material. So when you do a threat
4 assessment you think here's an individual who is
5 possibly armed, who obviously does not seem to hold
6 a favorable opinion of the company based on his
7 actions to subvert its livelihood and success, who
8 failed to respond to directions when we asked him
9 not to continue his contact with Ms. Lopez after the
10 first interview and he blatantly disregarded those,
11 we assessed that it was -- it was possible that he
12 could have posed a threat.

13 **Q. How do you know he blatantly disregarded**
14 **your instructions to not communicate with Lopez**
15 **after the first interview?**

16 A. Because he told me in the second interview
17 that right after -- and one of the last things I
18 said to him in the first interview was you are still
19 under a nondisclosure agreement, please do not have
20 anymore contact with Ms. Lopez. And he said okay, I
21 understand. And then in the second interview when I
22 asked him, have you had contact with Ms. Lopez, he
23 said, yes, right after the interview I called her.
24 He didn't -- after something like that, that
25 situation where he had interviewed with us for

1 A. No.

2 Q. Did you have any concerns -- well, did
3 anything in that interview give you any concern that
4 Mr. Tripp might do something violent?

5 A. So we understood a few indicators of his
6 background. We had the -- we had the information
7 about, you know, selling the firearm or attempting
8 to sell a firearm, attempting to sell some related
9 material online, and, you know, we understood from -
10 - from interviews and from his work history and file
11 that he had been somewhat volatile, getting very
12 upset particularly when he disagreed with
13 colleagues, you know, he walked in with a backpack,
14 we didn't ask to look at the backpack or see
15 anything inside. We allowed him to sit close to the
16 door which put our backs to the wall with only one
17 exit. These are things you think about from a basic
18 security standpoint. It wasn't anything
19 specifically with him about how we placed the room
20 but we try to make the interviewee feel as
21 comfortable as possible. So I think you tend to
22 have that always in the back of your mind about
23 whether or not when it gets to the point in the
24 interview where the interviewee feels as though, you
25 know, they -- they may be in the wrong and it's

1 obvious and apparent they're in the wrong based on
2 where the questions are going, they may react, you
3 know, in a certain way. So it had come to our
4 attention in the past he had become quite upset. So
5 I think you just think about those factors.

6 **Q. Do you own a firearm?**

7 **MR. UMHOFFER:** Objection. I instruct the
8 witness not to answer. He's got a right to privacy.

9 **MR. FISCHBACH:** Do you have a position on
10 that, Sean?

11 **MR. GATES:** No, it's up to him.

12 **BY MR. FISCHBACH:**

13 **Q. Is it your testimony that the mere fact of**
14 **owning a firearm is an indicator that you might be a**
15 **violent person?**

16 **A.** I've never said that and that's not what I
17 am saying.

18 **Q. I just wanted to make sure because --**

19 **A.** What I'm discussing is the access to,
20 right, so we had, at least had an indication of
21 access to. If we had no -- nothing to -- nothing to
22 suggest that there was access to, it doesn't mean
23 that he didn't, but it's at least on our mind,
24 right? We know it because it had come up in the
25 interviews so you can't just block that out.

1 A. During the interview?

2 Q. Yes.

3 A. I don't think anything during the
4 interview gave me that impression that I recall.
5 But that wasn't what I was basing my assessment on.
6 You look holistically. That's what I was assessing,
7 looking holistically at the situation, not at a
8 single factor.

9 Q. And thank you for clarifying.

10 A. And I don't know that I suggested or that
11 my conclusion was that he was prone to violence
12 either.

13 Q. That's kind of what I'm getting at. Given
14 the holistic picture, by the time you completed this
15 interview of Mr. Tripp on June 15th, based on what
16 he had said, based on what your investigation
17 uncovered so far, had you made any conclusions that
18 he was prone to violence?

19 A. My conclusions were that he was a volatile
20 individual who appeared to have access to firearms
21 and obviously from what we were seeing was not
22 acting with Tesla's best interest in mind. To put
23 myself in his mind-set would have been difficult but
24 what I do think, reflecting on that time, was that
25 it was difficult to know how he was going to react

1 to having been confronted and when he left that
2 interview knowing how he was going to handle the
3 ramifications of knowing that he had been caught in
4 his scheme.

5 **MR. FISCHBACH:** Please read the last
6 question back to the witness.

7 **(The record was read by the reporter.)**

8 A. I don't think we had concluded that he was
9 prone to violence, but I don't think we ruled
10 anything out considering we didn't know how he would
11 react to the ramifications of being caught in his
12 scheme and the weight of what might be the potential
13 consequences of that outcome. We simply didn't
14 know.

15 **(Deposition Exhibit 10 was marked for**
16 **identification.)**

17 **BY MR. FISCHBACH:**

18 Q. Sir, the court reporter has handed you
19 what's been marked as Deposition Exhibit 10. Have
20 you ever seen this email before?

21 A. I believe so, or it was read to me.

22 Q. Subsequent to this email from Mr. Tripp to
23 Elon Musk, did you communicate with Mr. Tripp?

24 A. I did.

25 Q. How did you communicate with him?

1 **Q. Okay. Can you tell us what it is?**

2 A. I mean, it appears to be -- it's a
3 printout of the -- it's the -- sorry, it's the --
4 it's a printout of his Excel spreadsheet that was
5 also on his cell phone.

6 **Q. That's Mr. Tripp's spreadsheet?**

7 A. Correct.

8 **Q. If we just -- so the first page is the**
9 **cover email, that's to you, correct?**

10 A. Correct.

11 **Q. Second page is the Excel spreadsheet that**
12 **we saw a picture of on his phone?**

13 A. Yes.

14 **Q. The third page is another tab that has**
15 **some values on it, correct?**

16 A. Correct.

17 **Q. And then the last two pages are entitled**
18 **Query that I Run?**

19 A. Yes.

20 **Q. What did he explain that last page to be?**

21 A. The last page is -- I have two pages.

22 **Q. Last two pages, sorry.**

23 A. Last two pages, okay. It's -- so what he
24 stated was to provide proof to Linette Lopez that he
25 was acquiring the data from our system, he showed

1 her a copy of the exact query that he ran -- that he
2 wrote and ran on our system to extract the data that
3 populates his spreadsheet.

4 **Q. After your interview with Mr. Tripp on the**
5 **14th, did you do anything with that spreadsheet?**

6 **A. Yes.**

7 **Q. What did you do?**

8 **A. Well, we -- we analyzed it, I mean from a**
9 **forensic standpoint we looked at it, we looked at**
10 **this code and query. And one of the things that was**
11 **-- a couple of things stood out. One of the things**
12 **just on face value that's particularly concerning**
13 **about this is that he's providing a specific query**
14 **that can be run on our system and he's sending that**
15 **to a third party, which would enable them to**
16 **essentially provide that to anyone who with access**
17 **to our system could run an identical query and**
18 **extract this data at any point in time. So it**
19 **essentially does provides persistent access if Ms.**
20 **Lopez or whatever third party that document was**
21 **shared with just repeated this query on our system**
22 **even after Mr. Tripp was gone, right? So it's the**
23 **blueprint to extract the particular data that he**
24 **used for his query. Even without necessarily the**
25 **technical knowledge to write the query themselves,**

1 somebody has the blueprint to do it here.

2 The second thing that jumped out at us

3 when I opened the spreadsheet on the laptop we were

4 using to look at this, a message that popped up that

5 said macros were enabled but it was unable to

6 connect to the host or something to that effect. I

7 can't remember exactly what that message said. The

8 implication was that something in this document was

9 attempting to call out and send information and that

10 was particularly concerning because it looked as

11 though the spreadsheet that he had used or he had

12 created was attempting to send a signal.

13 Q. Send a signal out of the spreadsheet you
14 mean?

15 A. Right, transfer the data somewhere.

16 Q. Transfer the data in the spreadsheet?

17 A. To an unknown location, I mean, enabling
18 the macros and being unable to connect to a host was
19 concerning, whatever the statement was, I don't
20 remember how, but whatever it was to myself, to our
21 forensic experts, to the Tesla IT staff was
22 concerning enough to then look for whether or not
23 there was a persistent query that was running and
24 pushing data outside the system.

25 Q. Going back to the interview with Mr.

1 Q. Okay. But you do recognize it as a text
2 message that Mr. Uhlmann sent?

3 A. Yes. And it looks like, as far as what I
4 recall, it's a message that he sent to a reporter.

5 Q. Okay. So this is a text message that he
6 sent to a reporter and then he provided it to you?

7 A. Yes, I believe. It's -- it looks like --
8 it looks like his screen from his phone from what I
9 recall.

10 Q. Okay. So let me do a couple more clips
11 from the interview with Mr. Uhlmann.

12 MR. FISCHBACH: Same objection as before.

13 MR. GATES: Understood.

14 BY MR. GATES:

15 Q. So once again, this is TES TRIPP
16 underscore 0017327. It's a recording and I'm going
17 to start at a minute 34 and 41 seconds.

18 (Audio played.)

19 BY MR. GATES:

20 Q. Is that a portion of the recording of the
21 interview with Mr. Uhlmann?

22 A. Yes.

23 Q. And he mentions \$50,000?

24 A. Yes --

25 Q. Did you hear that?

1 A. -- I heard it.

2 Q. You testified earlier that you had heard
3 that number from somewhere else as well?

4 A. Yes. I recall that I heard that through
5 the course of the investigation interviewing others,
6 although I can't recall exactly who provided the
7 dollar figure, but it wasn't -- from my recollection
8 it wasn't just Mr. Uhlmann who mentioned that
9 mentioned that -- mentioned that coming from Mr.
10 Tripp.

11 Q. Okay. I'm going to play another clip from
12 the interview starting at mark 1 hour 31 minutes and
13 34 seconds.

14 MR. FISCHBACH: Same objections as before.

15 (Audio played.)

16 BY MR. GATES:

17 Q. In that portion of the interview -- first
18 of all, that was a portion of the interview,
19 correct?

20 A. Yes.

21 Q. Who was asking the questions?

22 A. Justin Zeefe and myself.

23 Q. Two more clips. Okay. Next clip is from
24 mark 1 hour 37 minutes and 32 seconds.

25 (Audio played.)

1 BY MR. GATES:

2 Q. Was that clip from the interview with Mr.
3 Uhlmann?

4 A. Yes.

5 Q. And who was asking the questions?

6 A. Justin Zeefe and myself.

7 Q. Who was answering the questions?

8 A. Mr. Uhlmann.

9 Q. Okay. Last one. This is starting at 1
10 hour 57 seconds and -- excuse me, 1 hour 57 minutes
11 and 50 seconds.

12 (Audio played.)

13 BY MR. GATES:

14 Q. Was that a portion of the recording of the
15 interview with Mr. Uhlmann?

16 A. Yes.

17 Q. Who was speaking in that portion?

18 A. Mr. Uhlmann, Justin Zeefe.

19 Q. Can you find Exhibit 3 in your pile there.

20 MR. FISCHBACH: What is that John, the
21 damages?

22 MR. GATES: The damages report, yeah.

23 A. Okay.

24 BY MR. GATES:

25 Q. And if you kind of flip to the back

CERTIFICATE

I, Terri L. Huseth, do hereby certify that I reported all proceedings adduced in the foregoing matter and that the foregoing transcript pages constitutes a full, true and accurate record of said proceedings to the best of my ability.

I further certify that I am neither related to counsel or any party to the proceedings nor have any interest in the outcome of the proceedings.

IN WITNESS HEREOF, I have hereunto set my hand this 4th day of September, 2019.



Terri L. Huseth